

§ 1951.951

will be handled in accordance with the provisions outlined in the contract.

IX. Authorization Requests

When under the circumstances stated in the contract's terms and conditions (Form FSA 1951-39), the grantor needs the Government's written authorization to proceed with an action, a written request for such authorization must be provided by the grantor to the servicing official. In order to provide the requested written authorization, the servicing official must determine that the request does not violate the contract's terms and conditions and must receive the written concurrence of the enforcement authority.

[62 FR 10147, Mar. 5, 1997]

Subpart T—Disaster Set-Aside Program

SOURCE: 60 FR 46756, Sept. 8, 1995, unless otherwise noted.

§ 1951.951 Purpose.

This subpart sets forth the policies and procedures for the Disaster Set-Aside (DSA) Program. The DSA program is available to Farm Loan Program (FLP) borrowers, as defined in subpart S of this part, who suffered losses as a result of a natural disaster. FLP loans that may be serviced under this subpart include Farm Ownership (FO), Operating (OL), Soil and Water (SW), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Economic Opportunity (EO), Softwood Timber (ST), Recreation (RL), and Rural Housing loans for farm service buildings (RHF). Nonprogram (NP) farm type loans may be serviced under this subpart for borrowers who also have FLP loans.

[60 FR 46756, Sept. 8, 1995, as amended at 64 FR 393, Jan. 5, 1999; 65 FR 31249, 31250, May 17, 2000; 68 FR 55303, Sept. 25, 2003]

§ 1951.952 General.

DSA is a program whereby borrowers who are current or less than 90 days past due on all FLP loans, may apply to move the scheduled annual installment for each eligible FLP loan to the end of the loan term. The intent of this program is to relieve some of the borrower's immediate financial stress caused by a natural disaster. DSA will

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not be used to circumvent the servicing available under subpart S of this part.

[68 FR 55303, Sept. 25, 2003]

§ 1951.953 Notification and request for DSA.

(a) [Reserved]

(b) *Deadline to apply.* Subject to § 1951.954(a)(5), all FLP borrowers liable for the debt must request DSA within 8 months from the date the natural disaster was designated in accordance with 7 CFR part 1945, subpart A.

(c) *Information needed for a complete application.* (1) A written request for DSA signed by all parties liable for the debt;

(2) Actual production, income, and expense records for the past five years, including the production and marketing period in which the natural disaster occurred; and

(3) Other information requested by the servicing official when needed to make an eligibility determination.

[68 FR 55303, Sept. 25, 2003]

§ 1951.954 Eligibility and loan limitation requirements.

(a) *Eligibility requirements.* The following requirements must be met to be eligible for DSA:

(1) The borrower must have:

(i) Operated a farm or ranch in a county designated a natural disaster area or a contiguous county as provided in 7 CFR part 1945, subpart A, and

(ii) Been a borrower and operated the farm or ranch at the time of the disaster period.

(2) A borrower cannot have more than one installment set aside under the DSA program on each loan. If all previously approved set-asides are paid in full, or cancelled through restructuring under subpart S of this part, the set-aside will no longer exist and the loan may again be considered for DSA.

(3) The borrower must have acted in good faith as defined in § 1951.906 of subpart S of this part and the borrowers inability to make the upcoming scheduled FSA payments must be for reasons which are not within the borrower's control.

(4) All nonmonetary defaults must have been resolved. This means that even though the borrower has acted in

good faith, the borrower may still be in default for reasons, such as, but not limited to: no longer farming; prior lienholder foreclosure; bankruptcy or under court jurisdiction; not properly maintaining chattel and real estate security; not properly accounting for the sale of security; or not carrying out any other agreement made with the Agency.

(5) The borrower must be current or less than 90 days past due on all FLP loans at the time the application for DSA is complete. Borrowers paying under a debt settlement adjustment agreement in accordance with subpart B of part 1956 of this chapter are not eligible.

(6) The borrower must not be 165 or more days past due when Exhibit A of Agency Instruction 1951-T (available in any FSA office) is executed.

(7) As a direct result of the designated natural disaster, the borrower does not have sufficient income available to pay all family living and operating expenses, other creditors, and FSA. This determination will be based on the borrower's actual production, income and expense records for the disaster or affected year and any other records required by the servicing official. Compensation received for losses shall be considered as well as increased expenses incurred because of the disaster.

(8) For the next business accounting year, the borrower must develop a positive cash flow projection showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses and meet scheduled payments on all debts, including FLP debts. The cash flow projection must be prepared in accordance with 7 CFR 1924.56. The borrower will provide any documentation required to support the cash flow projection.

(9) After the amount for each loan is set-aside, all FLP and NP farm type loans of the borrower must be current.

(10) The borrower's FLP loans have not been accelerated.

(11) The borrower's FLP loans have not been restructured under subpart S of this part since the natural disaster occurred.

(b) *Loan limitation requirements.* (1) The loan must have been outstanding at the time of the natural disaster.

(2) The term remaining on the loan receiving DSA equals or exceeds 2 years from the due date of the installment being set-aside.

(3) The amount set-aside may not exceed the amount of the first or second scheduled annual installment due after the disaster occurred.

(4) The amount set-aside may not exceed the amount the borrower was unable to pay FSA due to the disaster. Borrowers are required to pay any portion of an installment that they are able to pay.

(5) The amount set-aside will equal the unpaid balance remaining on the installment at the time the borrower signs Exhibit A of Agency Instruction 1951-T (available in any FSA office.) This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date taking into consideration any payments applied to principal and interest since the due date. Recoverable cost items may not be set aside and the account must be serviced in accordance with § 1951.907(d).

[68 FR 55303, Sept. 25, 2003; 68 FR 69955, Dec. 16, 2003]

§§ 1951.955–1951.956 [Reserved]

§ 1951.957 Eligibility determination and processing.

(a) *Eligibility determination.* (1) Within 30 days of a complete DSA application, the Agency official will determine if the borrower meets the requirements set forth in § 1951.954. Approval shall be contingent upon the borrower's continuing eligibility through the signing of Exhibit A of Agency Instruction 1951-T (available in any FSA office).

(2) The borrower has 45 days to sign Exhibit A of Agency Instruction 1951-T (available in any FSA office) for each loan installment set-aside approved. Subject to § 1951.954(a)(6), the Agency may provide for a longer period of time under extenuating circumstances, such as where the Agency's approval is contingent upon the borrower paying a